APPEAL NO. 93188

On February 5, 1993, a contested case hearing was held in (city), Texas, with Thurman Williams presiding. The issues considered were whether the claimant, (who is the respondent in this case) sustained a lumbar spine and leg injury on (date of injury), while employed by Gates Enterprises (employer), and whether she gave notice of injury within 30 days to the employer as required by the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-5.01 (Vernon Supp. 1993) (1989 Act). The hearing officer determined both issues in favor of the claimant.

The carrier has appealed this decision, pointing out how it believes that the decision is against the weight of the credible evidence. The claimant responded, asking that the decision be affirmed.

DECISION

Not being able to find reversible error in the decision, we affirm the determination of the hearing officer.

The claimant, who had worked for the employer for three days at the time she was injured, was required to pack nacho chips into boxes along a conveyor belt. She stated that on (date of injury), she was walking to her work station with a stack of boxes she had retrieved from the same room when she fell into "a hole" in the concrete floor of the work area. She stated that this hole was usually covered with plywood, and was used to discard dough. She indicated that she fell in to just below her knee, and was covered with dough. She reported her injury at that time to (Mr. C), who she assumed was her immediate supervisor because he directed her actions and gave her permission to go on breaks or to lunch. She worked the remainder of the day; she said she was not in pain at first but experienced growing pain in her ankle and back throughout the rest of the day. According to time records tendered by the employer, claimant worked that day for twelve hours, and for four hours the following day. Claimant said she resigned after August 28, 1991, because she was not able work with the pain.

The claimant said that she was not aware she could obtain medical treatment, but eventually went to a clinic, the Clinic, that was recommended by a friend, in December 1991, because her leg and back hurt. Claimant said that the doctor indicated that her back injury could have resulted from this fall. She said she did not have back pain prior to August 1991. In 1992, the claimant also developed shoulder and neck pain, but testified that no doctor had indicated to her that these pains were related to her fall.

In December 1991, claimant was diagnosed with lumbar strain and sprain/strain of the left foot. Records of the Clinic indicate a history that claimant stepped down from a door step and banged her head against a wall. Claimant denied that this is what she told the clinic.

(Mr. O), the vice-president and general manager for the employer, stated that Mr. C was the packing machine operator, so that any breaks or lunch of the packers would have to be done around his schedule. Mr. O identified the "hole" as a floor drain, nine feet long, three inches wide, and four inches deep. He stated that such drains were never covered with plywood, and there would have been no dough in the drain. Mr. O denied that Mr. C was a supervisor, but did say that he would "have managed two people," one of whom was the claimant. He said that the supervisor was actually Mr.M, who had also hired the claimant.

Mr. O stated that there were approximately ten company employees at the time of the accident, and that claimant's workers' compensation claim was the first one for the company, which had begun operating in April 1991. He stated, however, that subsequent claims which have arisen have been paid.

Mr. O indicated that when his company took over the premises, additional reinforcing bars were put into the floor drains to prevent the grate tops from slipping or falling in when stepped on.

Transcribed statements from the claimant and various employees of the company were put into the record; however, none were signed by the purported declarant or sworn to and apparently were given little weight by the hearing officer. Frankly, we cannot find error whenever such transcripts are given little weight by the trier of fact. At a bare minimum, it would seem that such statements could be signed and at least acknowledged as accurate by the declarant (rather than the transcriber). *See* Texas Workers' Compensation Commission Appeal No. 92319, decided August 26, 1992.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Article 8308-6.34(e). The hearing officer's decision will not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The fact of an injury may be established solely by a claimant's testimony. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989). The rules of the Texas Workers' Compensation Commission, specifically Tex. W.C Comm'n 28 TEX. ADMIN. CODE § 122.1(c) (Rule 122.1(c)), indicate that notice may be given to any employee of the employer who holds a management or supervisory position, and that the person who receives notice need not be the ultimate supervisor or manager. The hearing officer's determination that notice to Mr. C was adequate notice under Article 8308-5.01 is

supported by sufficient evidence.

Regarding the fact of any injury, there are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, even if another trier of fact could have concluded that any injuries manifested by the claimant during her December 1991 doctor's examination did not originate with the employment.

The determination of the hearing officer is affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge